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UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL JAMES PAUCKERT,

Defendant.

12-CR-00138-TOR

United States' Sentencing
 Memorandum

Plaintiff, United States of America, by and through Michael C. Ormsby, United States Attorney for the Eastern District of Washington, and Timothy J. Ohms, Assistant United States Attorney for the Eastern District of Washington, submits herewith the United States' Sentencing Memorandum.

In accordance with the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), sentencing courts must engage in a two-step process when imposing a sentence. The first step requires a court to calculate properly the advisory Guidelines sentencing range. *See United States v. Cantrell*, 433 F.3d 1269, 1279-80 (9th Cir. 2006). A sentencing court should use this range as a starting point for its assessment of an appropriate sentence. *Id.* The second step requires a sentencing court to impose a "reasonable" sentence in light of all the factors under 18 U.S.C. § 3553(a). *See United States v. Marcial-Santiago*, 447 F.3d 715, 717 (9th Cir. 2006).¹ A wide range of sentences may be deemed

¹ *Cf. United States v. Zolp*, 479 F.3d 715, 722 (9th Cir. 2007) (the scheme of downward and upward departures is treated as essentially replaced by the requirement that judges impose a "reasonable" sentence).

1 reasonable. *See United States v. Mohamed*, 459 F.3d 979, 989 (9th Cir. 2006)
2 (“reasonableness is a range, not a point.” (quoting *United States v. Cunningham*,
3 429 F.3d 673, 679 (7th Cir. 2005))).

4 In fulfilling its responsibilities under 18 U.S.C. § 3553, the court is not
5 limited in the information that it may consider and may consider any evidence that
6 bears upon the defendant’s background, character, and conduct:

7 No limitation shall be placed on the information concerning the
8 background, character, and conduct of a person convicted of an
9 offense which a court of the United States may receive and consider
10 for the purpose of imposing an appropriate sentence.

11 18. U.S.C. § 3661. The information which the court may consider extends to prior
12 allegations for which no criminal charges were filed or for which a defendant was
13 previously acquitted. *United States v. Putra*, 519 U.S. 148 (1997).

14 In the present case, the government will seek to supplement the information
15 in the Presentence Report with testimony from the following two witnesses:

16 (1) FBI Special Agent Bomb Technician Leland McEuen. SABT McEuen
17 was the federal case agent assigned to the investigation of this case. SABT
18 McEuen will be called to testify concerning his observations and conclusions
19 regarding the explosive device that formed the basis of Counts 2 and 3 of the
20 Indictment. Based on his training and experience, he has specialized knowledge of
21 the manufacture, fusing, and detonation characteristics of improvised explosive
22 devices similar to the device recovered in this case. A photograph of components
23 of the explosive device possessed by the Defendant in this case is attached as
24 Exhibit 1.

25 (2) Idaho Dept. of Corrections, Senior Parole Officer, Maria Howard.
26 Officer Howard supervised the Defendant during the period of the incidents in this
27 case. Officer Howard will be called to testify concerning the Defendant’s behavior
28 and violations of conditions of his parole leading up to his absconding from
supervision. Officer Howard will testify that the Defendant ultimately refused

1 treatment and refused polygraph examinations that had been ordered by the court.
2 Prior to this, polygraph examinations administered to the Defendant indicated
3 deception in response to relevant questions. A Report of Parole Violation dated
4 April 5, 2012, and Addendum to the Report of Parole Violation dated May 30,
5 2012, are attached as Exhibit 2. The investigation revealed that the Defendant had
6 researched Officer Howard's home address. Officer Howard will testify that the
7 Defendant had no legitimate reason for obtaining her home address.

8 Although *Booker* requires the court to consider the factors identified in 18
9 U.S.C. § 3553(a), that requirement "does not necessitate a specific articulation of
10 each factor separately, but rather a showing that the district court considered the
11 statutorily-designated factors in imposing a sentence." *See Rita v. United States*,
12 551 U.S.338 (2007); *United States v. Knows His Gun*, 438 F.3d 913, 918 (9th
13 Cir.2006). The factors a sentencing judge must consider are the nature and
14 circumstances of the offense and the history and characteristics of the defendant.
15 The sentencing court must also consider the need for the sentence imposed to
16 reflect the seriousness of the offense; promote respect for the law; provide just
17 punishment; afford adequate deterrence to criminal conduct; protect the public
18 from further crimes of the defendant; provide the defendant with needed
19 educational training, medical care, or other correctional treatment. A sentencing
20 court must also consider "the need to avoid unwarranted sentencing disparities
21 among defendants with similar records who have been found guilty of similar
22 conduct." 18 U.S.C. § 3553(a)(6).

23 In the present case, the Defendant's conduct leading up to his arrest on May
24 23, 2012, indicates a pattern of escalating criminal behavior and planning toward
25 further criminal activity. The diversity of the Defendant's criminal conduct, his
26 circumstances at the time as a convicted sex offender on warrant status, his history,
27 and other related uncharged conduct indicate that the Defendant poses a risk to the
28 public and that a substantial sentence is necessary in order to mitigate that risk.

1 We begin in this case with a Defendant who has a prior conviction for a
2 violent felony offense and who has previously engaged in the unlawful possession
3 of firearms. Thus, he is a recidivist with specific reason to understand the
4 restrictions imposed on him regarding the possession of firearms. His awareness
5 of these restrictions is further evidenced by his use of a straw purchaser in order to
6 acquire the firearm. The Defendant's prior sentence for residential burglary and
7 possession of stolen firearms did not deter him from engaging in further unlawful
8 conduct involving the possession of firearms.

9 As noted in the PSR and elsewhere in briefing, the Defendant also has two
10 prior convictions for statutory rape against two separate victims. These placed an
11 obligation on the Defendant to register his residence. In addition, SABT McEuen
12 characterized materials found in the residence as a "rape kit" or materials that
13 would be useful in committing a sexual assault. Thus, there is legitimate reason for
14 concern that the Defendant was planning and/or preparing to commit further sexual
15 offenses. In addition, as a result of his prior convictions for statutory rape, the
16 Defendant was required to submit to polygraph examinations as directed by his
17 parole officer. When these examinations indicated deception, the Defendant failed
18 to report for further examinations and ultimately absconding from supervision.

19 While he was on warrant status, the Defendant constructed an explosive
20 device, powered by Pryodex and triggered remotely by a wireless doorbell and
21 "electric matches" fashioned from Christmas lights. The device had a separate
22 plastic tube containing screws and other improvised shrapnel taped to one side of
23 its casing. The side of the casing where the shrapnel was attached had been filed or
24 shaved in a manner that would weaken the casing at that point. The shrapnel and
25 its manner of placement on the casing indicate that the shrapnel was intended to be
26 directional. Thus, it was specifically designed to kill or maim persons or, at a
27 minimum, its design was consistent with that intent. The triggering mechanism
28 required the Defendant to be in a line of sight with the device when setting it off.

1 Thus, he would see the intended target pick up or approach the device before
2 setting it off. Taken in conjunction with the fact that the Defendant was
3 researching the home addresses of his parole officer and others in law enforcement
4 and that his relationship with his parole office had become complicated by the
5 Defendant's inability to "pass" his court-ordered polygraph examinations, the
6 Defendant's conduct in researching and constructing the explosive device is
7 especially grave.

8 In addition to the foregoing, the Defendant had acquired the equipment,
9 expertise, and interest in manufacturing fraudulent identifications. In the context
10 of the Defendant's other conduct in his case, the Defendant's interest and ability in
11 the creation of fraudulent identifications is more aggravating for sentencing
12 purposes than similar conduct committed by others who were not engaged in other
13 significant criminal conduct. Fraudulent identifications are tools for the
14 commission of other criminal acts. In this case, the evidence of what those other
15 criminal acts may be is not limited to fraud but includes significant crimes of
16 violence and sexual misconduct.

17 In summary, the Defendant in this case was a sexual offender on warrant
18 status, who had armed himself with a firearm and an explosive device, acquired the
19 means to create fraudulent identifications, packed materials useful in the
20 commission of a sexual assault, and researched potential targets for retaliation.
21 Taken together, the sum of this information is alarming and is more serious for
22 sentencing purposes than the individual acts viewed in isolation. The government
23 contends that the 3553 intend for the Defendant's conduct to be viewed in context
24 and for the court to consider the natural consequences of the Defendant's planning
25 and preparation in the light of his criminal history. A consideration of the 3553
26 factors in this case result in a conclusion that the Defendant should receive a
27 sentence substantially above the advisory Guideline range as set forth in the PSR.
28

1 Based on the forgoing, the government anticipates recommending a sentence
2 of at least 15 years in custody, which is the statutory maximum penalty for Count
3 5. In addition, the government anticipates recommending that the court consider
4 imposing consecutive terms of imprisonment, if necessary, in order to accomplish
5 the total punishment determined appropriate by the court. Finally, the government
6 anticipates recommending consecutive terms of supervised release in order to
7 ensure the safety of the community following the Defendant's release from
8 custody.

9 DATED August 22, 2013.

10 Michael C. Ormsby
11 United States Attorney

12 s/Timothy J. Ohms

13 Timothy J. Ohms
14 Assistant United States Attorney

15 I hereby certify that on August 22, 2013, I electronically filed the foregoing
16 with the Clerk of the Court using the CM/ECF System which will send notification
17 of such filing to the following, and/or I hereby certify that I have mailed by United
18 States Postal Service the document to the following non-CM/ECF participant(s):

19 Robert R. Fischer
20 Federal Defenders of Eastern Washington and Idaho
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23 s/Timothy J. Ohms

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